

ORDINANCE NO. 1912

AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON, AMENDING ORDINANCE 1712, CHAPTERS 100-DEFINITIONS AND 322-WATER QUALITY RESOURCE REGULATIONS, BY ADOPTING CERTAIN AMENDMENTS THAT IMPLEMENT REGIONAL WATER QUALITY RESOURCE REGULATIONS.

(Milwaukie Planning Department Application ZA-02-05)

WHEREAS, the City of Milwaukie desires to review and amend its Zoning Ordinance as needed to ensure its currency; and

WHEREAS, Metro Urban Growth Management Functional Plan Title 3 requires all metropolitan area cities and counties to adopt regional standards for water quality contained; and

WHEREAS, the changes in the Municipal Code adopted by this ordinance are consistent with Title 3; and

WHEREAS, the Planning Commission held work sessions on the proposed amendments on June 12, 2002, July 9, 2002, August 12, 2002, and August 27, 2002; and

WHEREAS, the City Council held work sessions on the proposed amendments on July 15, 2002, September 16, 2002, and October 15, 2002; and

WHEREAS, duly noticed public hearings were held by the Planning Commission on November 26, 2002, and by the City Council on December 17, 2002; and

WHEREAS, the changes are necessary to provide appropriate protection of the City's remaining water resources,

NOW, THEREFORE, THE CITY OF MILWAUKIE ORDAINS AS FOLLOWS:


- Section 1. The findings of fact in support of these amendments contained in application ZA-02-05 are incorporated by this reference and are hereby adopted.
- The application and proposed amendments are consistent with Zoning Ordinance 902-Amendment Procedure, 905-Approval Criteria for All Amendments, and 1011.5-Legislative Actions as shown in Attachment 5.
- Section 2. Milwaukie Municipal Code Section 19.322-Natural Resource Overlay Regulations, including subsection 19.322.1 through 19.322.18 is repealed.
- Section 3. Milwaukie Municipal Code Section 19.807-Destruction of Nonconforming Structure or Use is repealed.
- Section 4. Milwaukie Municipal Code Section 19.103-Definitions is amended as shown in Attachment 1.
- Section 5. Ordinance 1712 and Milwaukie Municipal Code Title 19 are amended by adoption of the new Chapter 322-Water Quality Resource Regulations as shown in Attachment 2.

- Section 6. Water Quality Resource Maps adopted by reference through the new Milwaukie Municipal Code Section 19.322.1(F) are shown in Attachment 3.
- Section 7. Ordinance 1712 and Milwaukie Municipal Code Chapter 19 are amended by adoption of the revised Section 807 (Milwaukie Municipal Code Section 19.807)-Destruction of Nonconforming Structure or Use as shown in Attachment 4.

Read the first time on December 17, 2002, and moved to second reading by 4 – 0 vote of the City Council.

Read the second time and adopted by the Council on December 17, 2002

Signed by the Mayor on December 17, 2002.


James Bernard, Mayor

ATTEST:


Pat DuVal, City Recorder

APPROVED AS TO FORM:
RAMIS, CREW, CORRIGAN &
BACHRACH, LLP


City Attorney

ATTACHMENT 1

AMENDS ORDINANCE 1712- ZONING ORDINANCE

SECTION 103-DEFINITIONS

New Definitions

Bankful Stage: Means the stage or elevation at which water overflows the natural banks of a stream or other waters of the state and begins to inundate upland areas. In the absence of physical evidence, the two-year recurrent flood elevation may be used to approximate the bankful stage.

Constructed Wetlands: Means those wetlands developed as a water quality or quantity facility, subject to change and maintenance as such. These areas must be clearly defined and/or separated from naturally occurring or created wetlands.

Debris: Means discarded man-made objects that would not occur in an undeveloped stream corridor or wetland. Debris includes, but is not limited to, tires, vehicles, litter, scrap metal, construction waste, lumber, plastic, or styrofoam. Debris does not include objects necessary to a use allowed by this ordinance, or ornamental and recreational structures. Debris does not include existing natural plant materials or natural plant materials which are left after flooding, downed or standing dead trees or trees which have fallen into protected water features.

Department of Environmental Quality (DEQ) Water Quality Standards: Means the numerical criteria or narrative condition needed in order to protect an identified beneficial use.

Development: Means any man-made change defined as buildings or other structures, mining, dredging, paving, filling, or grading in amounts greater than ten (10) cubic yards on any lot or excavation. Development does not include the following: a) Stream enhancement or restoration projects approved by cities and counties; b) Farming practices as defined in ORS 30.930 and farm use as defined in ORS 215.203, except that buildings associated with farm practices and farm uses are subject to the requirements of Title 3; and c) Construction on lots in subdivisions meeting the criteria of ORS 92.040(2).

Disturb: Means man-made changes to the existing physical status of the land, which are made in connection with development. The following uses are excluded from the definition: enhancement or restoration of the Water Quality Resource Area; and planting native cover identified in the Milwaukie Native Plant List.

Emergency: Means any man-made or natural event or circumstance causing or threatening loss of life, injury to person or property, and includes, but is not limited to, fire, explosion, flood, severe weather, drought, earthquake, volcanic activity, spills or releases of oil or hazardous material, contamination, utility or transportation disruptions, and disease.

Enhancement: Means the process of improving upon the natural functions and/or values of an area or feature, which has been degraded by human activity. Enhancement activities may or may not return the site to a pre-disturbance condition, but create/recreate processes and features that occur naturally.

Flood Management Areas: Means all lands contained within the 100-year floodplain, flood area and floodway as shown on the Federal Emergency Management Agency Flood Insurance Maps and the area of inundation for the February 1996 flood. In addition, all lands which have documented evidence of flooding.

Hazardous Materials: Means materials defined by the Oregon Department of Environmental Quality as hazardous.

Invasive Non-native or Noxious Vegetation: Means plant species that have been introduced and due to aggressive growth patterns and lack of natural enemies in the area where introduced, spread into native plant communities.

Mitigation: Means the reduction of adverse effects of a proposed project by considering, in the order: a) minimizing impacts by limiting the degree or magnitude of the action and its implementation; b) rectifying the impact by repairing, rehabilitating or restoring the affected environment; c) reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action by monitoring and taking appropriate measures; and d) compensating for the impact by replacing or providing comparable substitute water quality resource areas.

Native Vegetation: Means any vegetation native to the Portland metropolitan area or listed on the Milwaukie Native Plant List.

Net Acre: Means an area measuring 43,560 square feet excluding the following: rights-of-way; floodplains; protected water features; natural resource areas protected under statewide planning Goal 5; slopes in excess of 25%; and publicly owned land designated for park, open space, and resource protection.

Ordinary Mean High Water Line: Means as the elevation on the bank or shore to which water ordinarily rises in season.

Ordinary Mean Low Water Line: Means the line on the on the bank or shore to which water ordinarily recedes in season; synonymous with Mean Low Water.

Perennial Streams: Means all primary and secondary perennial waterways mapped by the U.S. Geological Survey.

Post-Construction Erosion Control: Means re-establishing groundcover or landscaping prior to the removal of temporary erosion control measures.

Protected Water Features:

Primary Protected Water Features shall include:

- a. Title 3 wetlands; and
- b. rivers, streams, and drainages downstream from the point at which 100 acres or more are drained to that water feature (regardless of whether it carries year-round flow); and
- c. streams carrying year-round flow; and
- d. springs which feed streams and wetlands and have year-round flow, and
- e. natural lakes.

Secondary Protected Water Features shall include intermittent streams and seeps downstream of the point at which 50 acres are drained and upstream of the point at which 100 acres are drained to that water feature.

Restoration: Means the process of returning a disturbed or altered area or feature to a previously existing natural condition. Restoration activities re-establish the structure, function, and/or diversity to that which occurred prior to impacts caused by human activity.

Facility: Means a created or constructed structure or drainage way that is designed, constructed and maintained to collect and filter, retain, or detain surface water run-off during and after a storm event for the purpose of water quality improvement.

Riparian: Means those areas associated with streams, lakes and wetlands where vegetation communities are predominately influenced by their association with water.

Routine Repair and Maintenance: Means activities directed at preserving an existing allowed use or facility including replacement of materials, but excluding any increases in the existing dimensions of the structure.

Significant Negative Impact: Means an impact that affects the natural environment, considered individually or cumulatively with other impacts on the Water Quality Resource Area, to the point where existing water quality functions and values are degraded.

Steep slopes: Means slopes that are equal to or greater than 25%.

Stormwater Pre-treatment Facility: Means any structure or drainage way that is designed, constructed, and maintained to collect and filter, retain, or detain surface water run-off during and after a storm event for the purpose of water quality improvement.

Stream: Means a body of running water moving over the earth's surface in a channel or bed, such as a creek, rivulet, or river. It flows at least part of the year, including perennial and intermittent streams.

Title 3 Wetlands: Means wetlands as shown on the Water Quality Resource Area Map and other wetlands added to city or county adopted Water Quality Resource Area maps consistent with the criteria in Metro Urban Growth Management Functional Plan Title 3 Section 3.

Utility Facilities: Means buildings, structures or any constructed portion of a system which provides for the production, transmission, conveyance, delivery or furnishing of services including, but not limited to, heat, light, water, power, natural gas, sanitary sewer, stormwater, telephone and cable television. Utility facilities do not include stormwater pre-treatment facilities.

Vegetated Corridor: Means the area of setback between the top of bank of a Protected Water Feature and the delineated edge of the Water Quality Resource Area as defined in Table 1.

Water Quality Resource Areas: Means vegetated corridors and the adjacent water feature as established in Chapter 322.

Water Quality and Floodplain Management Area: Means the area that identifies where the Water Quality Resource Area and Floodplain Management Area Overlay Zone is applied.

Water Quality Facility: Means any structure or drainage way that is designed, constructed and maintained to collect and filter, retain, or detain surface water run-off during and after a storm event for the purpose of water quality improvement. It may also include, but is not limited to, existing features such as constructed wetlands, water quality swales, and ponds that are maintained as stormwater quality control facilities.

Watershed: Means a geographic unit defined by the flows of rainwater or snowmelt.

Wetlands: Means those areas inundated or saturated by surface or ground water at a frequency and duration sufficient to support and under normal circumstances do support a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas.

ATTACHMENT 2

AMENDS ORDINANCE 1712- ZONING ORDINANCE

New Section 322 Water Quality Resource Regulations

322.1 Purpose, General Policies, and Declarations.

- A. Many of the City's original wetland and riparian resources have been adversely affected by historical development. These regulations seek to minimize additional adverse impacts and restore and improve resources where possible while balancing property rights and development needs of the City.
- B. It is the intent of this chapter to ensure protection of the functions and values of Water Quality Resource Areas at the time of development.
- C. It is not the intent of this chapter to:
 - 1. Impose any obligation on property owners for the restoration of existing developed sites to pre-development or natural condition.
 - 2. Impose any hardship or limitation against the continued maintenance of existing legal site conditions.
 - 3. Restrict activities that do not constitute development or to apply to activities that do not affect the water quality resource areas. Normal lawn and yard planting and maintenance does not include planting of invasive non-native or noxious vegetation.
 - 4. Prohibit normal lawn and yard landscape planting and maintenance.

This chapter is to be interpreted consistently with this intent.
- D. Relief from the strict application of this Section is afforded through 19.322.8 variance provisions and 19.322.9 modification of the Water Quality Resource Area boundaries.
- E. This Chapter provides protection for natural resources that have been identified for the purposes of implementing Statewide Planning Goal 5 and Metro Urban Growth Management Functional Plan Title 3.
- F. This Chapter establishes the Water Quality Resource Area Regulations. The Milwaukie Water Quality Resource Area Map is incorporated by reference as part of this Chapter.
- G. The Water Quality Resource Area regulations allow development in situations where adverse impacts from the development can be avoided or mitigated and where the strict application of these rules would deny reasonable economic use of property.
- H. Implementation of this Chapter is in addition to and shall be coordinated with Milwaukie Municipal Code Title 19 Zoning Ordinance, Title 18 Flood Hazard Regulations and Chapter 16.28 Erosion Control.
- I. Conditions legally existing as of {date of adoption} that are inconsistent with this Chapter are declared legal non-conforming situations.

- J. Evidence of physical conditions for sites existing at the time this Chapter was adopted shall consist of city, county, and Metro records, aerial photography, and other information that may be available.
- K. The Planning Director shall produce and maintain the Milwaukie Native Plants List.

322.2 Coordination with the Willamette Greenway Overlay

- A. For properties along the Willamette River, nothing in this chapter shall prohibit the maintenance of view windows authorized under the Milwaukie Zoning Ordinance 19.320 Willamette Greenway Zone.
- B. Except as provided for in section 322.2(A), provisions of this chapter shall apply where they are more restrictive than Chapter 19.320 Willamette Greenway Zone.

322.3 Applicability

Water Quality Resource Area regulations apply to all properties containing protected water features as shown on the adopted Water Quality Resource and Flood Hazard Map. Application for development activity shall be made in accordance with Title 19, this Chapter, and Sections 322.6 Application Requirements and 322.7 Development Standards.

322. 4 Activities Permitted Outright

The following activities are permitted outright in the Water Quality Resource Area and therefore do not require approval under the provisions of this Chapter except if they result in direct stormwater discharges to the Water Quality Resource Area:

- A. Stream, wetland, riparian and upland enhancement or restoration projects and development in compliance with a natural resource management plan or mitigation plan approved by the Planning Commission.
- B. Farming practices or farm uses, excluding buildings and structures except if such activities or uses in crease direct discharges to water resources.
- C. Change of use where there are no exterior alterations to buildings or structures, or increases in floor area, impervious surfaces or storage areas.
- D. The normal maintenance and repair of existing structures, utilities, access, streets, driveways, and parking improvements including asphalt overlays.
- E. Temporary emergency procedures necessary for the safety or protection of property.
- F. Landscape planting and maintenance that does not involve invasive non-native or noxious vegetation.
- G. Maintenance of public and private storm drainage facilities in accordance with a management plan approved by the Planning Commission.
- H. Other activities similar to the above that are determined by the Planning Director to be consistent with the purpose and policies of this Chapter and which have also been found to have no appreciable impact to the water quality resource area.
- I. Removal of invasive or non-native plant species.

322. 5 Activities Permitted Under Type I Application Review

The following activities are allowed within the Water Quality Resource Area under 19.1011.1 Type I application review subject to the conditions specified below except if it increases direct stormwater discharges to the Water Quality Resource Area:

- A. Measures to remove or abate nuisances, or any other violation of State statute, administrative agency rule or city or county ordinance subject to a mitigation plan to be approved by the Planning Director prior to the abatement activity.
- B. Tree removal as necessary to eliminate an imminent hazard to person or property when sufficient evidence of the hazard is provided to the satisfaction of the Planning Director.
- C. Improvements and modifications to legal structures that do not increase the building footprint or size and location of the existing area of disturbance within the Water Resource Quality Area. New decks, patios, building extensions, or other development that extend into the Water Quality Resource Area are subject to 322.4 (D).
- D. Other activities similar to the above that are determined by the Planning Director to be consistent with the purpose and policies of this Chapter and which have also been found to have no appreciable impact to the water quality resource area.

322. 6 Activities Permitted Under Type II Review

The following activities are allowed in the Water Quality Resource Areas subject to approval by the Planning Commission under section 19.1011.2 Type II review and compliance with Section 322.7 Development Standards.

- A. Improvement of existing public utility facilities where:
 - 1. The disturbed portion of the Water Quality Resource Area is restored; and
 - 2. Non-native vegetation within the disturbed area is removed from the Water Quality Resource Area and replaced with vegetation from the Milwaukie Native Plant List.
- B. Any activity allowed under 322.4 (A) and 322.4 (B) that increases direct stormwater discharges to the Water Quality Resource Area.
- C. Modification to any nonconforming situation subject to Type II review under Section 19.800 Nonconforming Situations.
- D. Other activities similar to the above that are determined by the Planning Director to be consistent with the purpose and policies of this Chapter and which have also been found to have no appreciable impact to the Water Quality Resource Area.

322. 7 Activities Permitted Under Minor Quasi-Judicial Review

The following activities are allowed within the Water Quality Resource Areas subject to approval by the Planning Commission under 19.1011.3 Minor Quasi-Judicial review and compliance with Section 322.7 Development Standards:

- A. Any activity allowed in the base zone, other than those listed in Sections 322.4 (A) through 322.4 (C).
- B. Roads to provide access to Protected Water Features or necessary ingress and egress across Water Quality Resource Areas.

- C. New public or private utility facility construction.
- D. Walkways and bike paths.
- E. New stormwater detention, retention, or pre-treatment facilities.
- F. Widening an existing road adjacent to, or running parallel to, a Water Quality Resource Area.
- G. Additions, alterations, rehabilitation or replacement of existing structures, roadways, accessory uses and development that increase the structural footprint or disturbed area within the Water Quality Resource Area.
- H. Natural resource management plans and stormwater management plans.
- I. Partitions and subdivisions that contain protected water features or Water Quality Resource Areas.

322.8 Prohibited Uses

- A. Following adoption of this chapter, new structures, development, or activity other than those allowed under in subsections 322.4 through 322.6 are prohibited in the Water Quality Resource Area.
- B. Uncontained areas of hazardous materials. This prohibition shall not be effective until the Planning Director has adopted administrative measures for its implementation, which shall be no later than June 1, 2003.

322.9 Application Requirements

Applications for Type II and Minor Quasi-Judicial review shall provide the following information in addition to the information required for the base zone:

- A. A topographic map of the site at contour intervals of five feet or less showing a delineation of the Water Quality Resource Area, which includes areas shown on the Water Quality and Flood Management Area map, and that meets the definition of Water Quality Resource Areas in Table 1.
- B. The location of all existing natural features including, but not limit to, all trees of a caliper greater than six (6) inches diameter at breast height (DBH), natural drainages on the site, springs, seeps, and outcroppings of rocks or boulders within the Water Quality Resource Area.
- C. Location of wetlands. Where wetlands are identified, the applicant shall follow the Division of State Lands wetlands delineation process. The delineation shall be prepared by a professional wetlands specialist and will be accepted only after approval by the Oregon Division of State Lands.
- D. An inventory and location of existing debris and noxious materials.
- E. An assessment of the existing condition of the Water Quality Resource Area in accordance with Table 2.
- F. An inventory of vegetation, including percentage ground and canopy coverage.
- G. Alternatives analysis demonstrating that:
 - 1. No practicable alternatives to the requested development exist that will not disturb the Water Quality Resource Area; and

2. Development in the Water Quality Resource Area has been limited to the area necessary to allow for the proposed use; and
 3. The Water Quality Resource Area can be restored to an equal or better condition in accordance with Table 2; and
 4. An explanation of the rationale behind choosing the alternative selected, including how adverse impacts to resource areas will be avoided and/or minimized.
- H For applications seeking an alteration, addition, rehabilitation or replacement of existing structures located within the Water Quality Resource Area:
1. Demonstrate that no reasonably practicable alternative design or method of development exists that would have a lesser impact on the Water Quality Resource Area than the one proposed; and
 2. If no such reasonably practicable alternative design or method of development exists, the project should be conditioned to limit its disturbance and impact on the Water Quality Resource to the minimum extent necessary to achieve the proposed addition, alteration, restoration, replacement or rehabilitation; and
 3. Provide mitigation to ensure that impacts to the functions and values of the Water Quality Resource Area will be mitigated or restored to the extent practicable.
- I. A Water Quality Resource Area Mitigation Plan that contains the following information :
1. A description of adverse impacts that will be caused as a result of development.
 2. An explanation of how adverse impacts to resource areas will be avoided, minimized, and/or mitigated in accordance with, but not limited to, Table 2.
 3. A list of all responsible parties including, but not limited to, the owner, applicant, contractor or other persons responsible for work on the development site.
 4. A map showing where the specific mitigation activities will occur.
 5. An implementation schedule, including timeline for construction, mitigation, mitigation maintenance, monitoring, reporting and a contingency plan. All in-stream work in fish-bearing streams shall be done in accordance with the Oregon Department of Fish and Wildlife in-stream timing schedule.
- J. All information contained in the application submission requirements and site plan checklist forms prescribed by the Planning Director.
- K. The application fee as adopted by the City Council.

322.10 Development Standards

Applications for development or land disturbance on properties that contain Water Quality Resource Areas shall demonstrate compliance with the following standards:

- A. The Water Quality Resource Area shall be restored and maintained in accordance with the mitigation plan and the specifications in Table 2.
- B. To the extent practicable, existing vegetation shall be protected and left in place. Work areas shall be carefully located and marked to reduce potential damage to the Water Quality Resource Area.

- C. Where existing vegetation has been removed, the site shall be revegetated as soon as practicable.
- D. Prior to construction, the Water Quality Resource Area shall be flagged, fenced or otherwise marked and shall remain undisturbed except as may be allowed by this chapter. Such markings shall be maintained until construction is complete.
- E. Stormwater pre-treatment facilities:
 - 1. The stormwater pre-treatment facility may encroach a maximum of 25 feet into the outside boundary of the Water Quality Resource Area of a primary water feature; and
 - 2. The area of encroachment must be replaced by adding an equal area to the Water Quality Resource Area on the property.
- F. Additions, alterations, rehabilitation and replacement of lawful structures.
 - 1. For existing structures, roadways, driveways, accessory uses and development which are nonconforming, this ordinance shall apply in addition to the nonconforming use regulations of the city.
 - 2. Additions, alterations, rehabilitation or replacement of existing structures, roadways, driveways, accessory uses and development shall not encroach closer to the Protected Water Feature than the existing structures, roadways, driveways, accessory uses and development
- G. Off-site Mitigation. Offsite mitigation shall not be used to meet mitigation requirements of this Chapter.
- H. Site preparation and construction practices shall be followed that prevent drainage of hazardous materials or erosion, pollution or sedimentation to the adjacent Water Quality Resource Area.
- I. Where practicable, the types, sizes and intensities of lights must be placed so that they do not shine directly into the natural resource locations.
- J. Where proposed, development of trails, rest points, viewpoints, and other facilities for the enjoyment of the resource must be done in such a manner so as to reduce impacts on the natural resource while allowing for the enjoyment of the resource.
- K. Areas of standing trees, shrubs, and natural vegetation will remain connected or contiguous, particularly along natural drainage courses, except where mitigation is approved, so as to provide a transition between the proposed development and the natural resource, provide opportunity for food, water and cover for animals located within the Water Quality Resource.
- L. Storm water flows as a result of proposed development within and to natural drainage courses shall not exceed pre-development flows.
- M. Road crossings of major natural drainage courses will be minimized as much as possible.
- N. The construction phase of the development must be done in such a manner to safeguard the resource portions of the site that have not been approved for development.

322.11 Variances

- A. The purpose of this Section is to ensure that compliance with this ordinance does not cause unreasonable hardship. To avoid such instances, the requirements of this ordinance may be varied. Variances are also allowed when strict application of this ordinance would unreasonably deprive an owner of economically viable use of land.
- B. This Section applies in addition to the standards governing proposals to vary the requirements of the base zone.
- C. A variance to avoid the unreasonable loss of economically viable use of a lot that contains protected water features is permitted. Applicants must demonstrate that without the proposed variance, the reasonable economic use of the property would be denied. The applicant must show that no other development proposal could result in permission for an economically viable use of the property.
- D. Variance Conditions
The Planning Commission may impose such conditions as are deemed necessary to minimize adverse impacts that may result from granting relief from provisions of this chapter. If a variance is granted, it shall be subject to the following conditions:
 - 1. The minimum width of the vegetated corridor shall be 25 feet on each side of a Primary Protected Water Feature.
 - 2. No more than 25 percent of the length of the Water Quality Resource Area for a Primary Protected Water Feature within a development site can be less than 25 feet in width on each side of the water feature.

322.12 Map Administration

- A. The purpose of this section is to provide a process for amending the Water Resource Quality Map to add water resources and correct the location of Protected Water Features and the Water Quality Resource Areas.
- B. Map Corrections, Deletions.
 - 1. Improperly mapped water features shown on the Milwaukie Water Quality Maps may be deleted by administrative review in accordance with 19.1011.2 subject to the following criteria:
 - a. In the case of wetlands, submission of a wetland delineation prepared by a professional wetland scientist in accordance with the 1996 Oregon Freshwater Wetland Assessment Methodology demonstrating that the site does not contain wetlands.
 - b. In the case of drainages, submission of a hydrology report prepared by a professional engineer demonstrating that the drainage does not meet the definition of a protected resource.
 - 2. The Planning Director shall confer with the Department of State Lands and Metro to confirm delineation and hydrology reports as may be needed prior to issuing a notice of decision on a requested map deletion.
 - 3. The City shall amend the Water Quality Resource Map if the wetland or hydrology report demonstrates:
 - a. That a Primary Protected Water Feature no longer exists because the area has been legally filled, culverted, or developed prior to the adoption of this Chapter; or

- b. The boundaries of the Water Quality Resource Area have changed since adoption of the Water Quality and Flood Management Areas map; or
- c. An error in the original mapping has been demonstrated.
- C. Map Correction, Additions and Modifications. Map corrections that require the addition of a protected water feature to the Water Quality Map shall be made in accordance with 19.900 Amendments.
- D. Modification of the Water Quality Resource Area. To modify the Water Quality Resource Area, the applicant shall demonstrate that the modification will offer the same or better protection of the Protected Water Feature, Water Quality Resource Area and Flood Management Area by:
 - 1. Preserving a vegetated corridor that will separate the Protected Water Feature from proposed development; and
 - 2. Preserving existing vegetated cover or enhancing the Water Quality Resource Area sufficient to assist in maintaining or reducing water temperatures in the adjacent Protected Water Feature; and
 - 3. Enhancing the Water Quality Resource Area sufficient to minimize erosion, nutrient and pollutant loading into the adjacent Protected Water Feature; and
 - 4. Protecting the vegetated corridor sufficient to provide filtration, infiltration and natural water purification for the adjacent Protected Water Feature; and
 - 5. Stabilizing slopes adjacent to the Protected Water Feature.

Table 1

Protected Water Feature Type (see definitions)	Slope Adjacent to Protected Water Feature	Starting Point for Measurements from Water Feature	Width of Vegetated Corridor
Primary Protected Water Features¹	< 25%	<ul style="list-style-type: none"> • Edge of bank full flow or 2-year storm level; • Delineated edge of Title 3 wetland 	50 feet
Primary Protected Water Features¹	> 25% for 150 feet or more ⁵	<ul style="list-style-type: none"> • Edge of bankful flow or 2-year storm level; • Delineated edge of Title 3 wetland 	200 feet
Primary Protected Water Features¹	> 25% for less than 150 feet ⁵	<ul style="list-style-type: none"> • Edge of bankful flow or 2-year storm level; • Delineated edge of Title 3 wetland 	Distance from starting point of measurement to top of ravine (break in >25% slope) ³ , plus 50 feet. ⁴
Secondary Protected Water Features²	< 25%	<ul style="list-style-type: none"> • Edge of bankful flow or 2-year storm level; • Delineated edge of Title 3 wetland 	15 feet
Secondary Protected Water Features²	> 25% ⁵	<ul style="list-style-type: none"> • Edge of bankful flow or 2-year storm level; • Delineated edge of Title 3 wetland 	50 feet

¹Primary Protected Water Features include: all perennial streams and streams draining greater than 100 acres, Title 3 wetlands, natural lakes and springs

²Secondary Protected Water Features include intermittent streams draining 50-100 acres.

³Where the Protected Water Feature is confined by a ravine or gully, the top of ravine is the break in the > 25% slope (see slope measurement in Appendix).

⁴A maximum reduction of 25 feet may be permitted in the width of vegetated corridor beyond the slope break if a geotechnical report demonstrates that slope is stable. To establish the width of the vegetated corridor, slope should be measured in 25-foot increments away from the water feature until slope is less than 25% (top of ravine).

⁵Vegetated corridors in excess of 50-feet for primary protected features, or in excess of 15-feet for secondary protected features, apply on steep slopes only in the *uphill* direction from the protected water feature.

Table 2

WATER QUALITY RESOURCE AREA REQUIREMENTS

EXISTING CONDITION OF WATER QUALITY RESOURCE AREA	REQUIREMENTS APPLICABLE TO PORTIONS OF THE WATER QUALITY RESOURCE AREA DISTURBED DURING DEVELOPMENT OR LAND DISTURBANCE
<p>Good Existing Corridor:</p> <p>Combination of trees, shrubs and groundcover are 80% present, and there is more than 50% tree canopy coverage in the vegetated corridor.</p>	<p>Submit an inventory of vegetation in areas proposed to be disturbed and a plan for mitigating water quality impacts related to the development, including: sediments, temperature and nutrients; sediment control; temperature control</p> <p>or addressing any other condition that may have caused the Protected Water Feature to be listed on DEQ's 303 (d) list.</p> <p>Inventory and remove debris and noxious materials.</p>
<p>Marginal Existing Vegetated Corridor:</p> <p>Combination of trees, shrubs and groundcover are 80% present, and 25-50 percent canopy coverage in the vegetated corridor.</p>	<p>Vegetate disturbed and bare areas with, non-nuisance plantings from Native Plants List.</p> <p>Inventory and remove debris and noxious materials.</p> <p>Revegetate with native species using a city approved plan developed to represent the vegetative composition that would naturally occur on the site.</p> <p>Revegetation must occur during the next planting season following site disturbance. Annual replacement of plants that do not survive is required until vegetation representative of natural conditions is established on the site.</p> <p>Restore and mitigate according to approved plan using non-nuisance plantings from Native Plants List.</p> <p>Inventory and remove debris and noxious materials.</p>
<p>Degraded Existing Vegetated Corridor:</p> <p>Less vegetation and canopy coverage than Marginal Vegetated Corridors, and/or greater than 10% surface coverage of any non-native species.</p>	<p>Vegetate disturbed and bare areas with appropriate plants from Native Plants List.</p> <p>Remove non-native species and revegetate with non-nuisance plantings from Native Plants List.</p> <p>Plant and seed to provide 100 percent surface coverage.</p> <p>Restore and mitigate according to approved plan using non-nuisance plantings from Native Plants List.</p> <p>Inventory and remove debris and noxious materials.</p>

ATTACHMENT 4

AMENDS ORDINANCE 1712- ZONING ORDINANCE

SECTION 800

New Section 807 Destruction of Nonconforming Structure of Use

A. If a nonconforming structure is destroyed by any cause to an extent exceeding fifty percent of its real market value, a future structure on the site shall conform to this Title except as provided in 19.807(C).

B. If any structure containing a nonconforming use is destroyed by any cause to an extent exceeding fifty percent of its real market value, and is not returned to use within six months by obtaining occupancy approval under applicable building codes, future uses on the site shall conform to this Title, except as provided in 19.807(C).

C. Where damage or destruction to either a nonconforming structure, or a conforming structure containing a nonconforming use, occurs by accident or natural hazard, the nonconforming situation may be restored subject to the following:

1. Within one month of the date the damage was incurred, the property owner shall submit notice of intent to restore the nonconforming situation to the Planning Director.
2. The Planning Director shall issue acknowledgment of the notice of intent upon receipt and the six-month time period in which to repair the premises described in 19.807(B), shall be extended to one year.
3. The Planning Director may authorize an extension to the one-year period, described in 19.807(C)(2), not to exceed six months upon a good faith showing by the property owner that work to restore the premises has been delayed due to legal or other proceedings necessary to resolve insurance claims, business negotiations, architectural or engineering design for reconstruction, or acquire needed land use approvals and construction permits.

ATTACHMENT 5
Water Quality Resource Regulations
Compliance Report

1. The proposal is consistent with Metro Urban Growth Management Functional Plan Title 3.
2. The proposal is consistent with Comprehensive Plan Chapter 3-Environmental and Natural Resources.
3. Consistency with Zoning Ordinance Section 900- Amendments.

Section 901 Initiation of Amendments

An amendment to the Milwaukie Zoning Map or to the text of this Ordinance may be initiated by the City Council, by the Planning Commission, or by the application of a property owner.

The proposal was initiated by the City and is therefore consistent with the above.

Section 902 Amendment Procedure

Section 902.1 The following application and review procedures shall be in effect for all proposed amendments:

- A. The Planning Commission shall conduct a public hearing on the proposed amendment at its earliest practicable meeting after the application has been determined to be complete by the Director. Zoning Map amendments shall follow the procedures outlined in subsection 1011.4, Major Quasi-Judicial review. Zoning text amendments shall follow the procedures outlined in subsection 1011.5, Legislative actions.
The application has been processed in accordance with Section 1011.5.
- B. Notice to Metro. The Planning Department shall provide notice to Metro of any proposed amendment to the Comprehensive Plan or Zoning Ordinance, subject to Milwaukie Zoning Ordinance subsection 1011.4, Major Quasi-Judicial review, and 1011.5, Legislative actions. Any copy of notice required pursuant to subsections 1011.4 and 1011.5, and provided to Oregon Department of Land Conservation and Development (DLCD) pursuant to ORS 197.610 or 197.615, shall be sent to Metro's Executive Officer at least 45 days before the final hearing on the adoption of any amendment. Notice to Metro shall include the same content as notice to DLCD pursuant to ORS 197.610 or 197.615 and, if available, shall include analysis demonstrating that the proposed amendments are consistent with the Metro Urban Growth Management Functional Plan. If the analysis demonstrating consistency with the functional plan is not included in the initial notice, a report containing the analysis shall be delivered to Metro no later than 14 days before a final hearing.
Notice has been provided to the Oregon Department of Land Conservation and Development and Metro in accordance with the procedures above.
- C. Denial of the proposed amendment shall be final unless it is appealed to the City Council as provided under Section 1002 of this Ordinance.

The above provision does not apply at this time.

- D. Upon approval of the proposed amendment by the Planning Commission, the Director shall provide a report of the Commission's recommendation to the City Council within 40 days after the hearing.

Action on the application will be consistent with the above following Commission action.

4. Section 903 Requirements for Zoning Map Amendments

(Not applicable to this proposal.)

5. Section 904 Requirements for Zoning Text Amendments

904.1. Proposals for zoning text amendments must provide written evidence that the following requirements are satisfied:

- A. Applicable requirements of Section 1003.

Section 1003 specifies submission requirements for all applications. This application is consistent with Section 1003.

- B. Reasons for requesting the proposed text amendments.

The request is made in accordance with City Council and Planning Commission direction to adopt city regulations that implement Title 3.

- C. Explanation of how the proposed text amendment is consistent with other provisions of this Ordinance.

Explanation is provided in this report.

- D. The approval criteria of Section 905

See Section 905 below.

6. Section 905 Approval Criteria for All Amendments

905.1 for all proposals, the applicant shall have the burden of proof regarding the following criteria:

- A. The proposed amendment must conform to applicable Comprehensive Plan goals, policies, and objectives and be consistent with the provisions of City ordinances, Metro Urban Growth Management Functional Plan, and applicable regional policies.

Consistency with this criterion is demonstrated in preceding sections.

- B. The anticipated development must meet the intent of the proposed zone, taking into consideration the following factors: site location and character of the area, the predominant land use pattern and density of the area, the potential for mitigation measures adequately addressing development effects, any expected changes in the development pattern for the area, the need for uses allowed by the proposed zone amendment, and the lack of suitable alternative sites already appropriately zoned for the intended use or uses. The Planning

Commission and City Council shall use its discretion to weigh these factors in determining the intent of the proposed zone.

This criterion applies to development in association with a rezoning and therefore does not apply to the proposed ordinance.

- C. The proposed amendment will meet or can be determined to reasonably meet applicable regional, State, or federal regulations.

The applicable Statewide Planning Goals are Goal 5-Open Spaces, Scenic and Historic Areas, and Natural Resources; Goal 7- Areas subject to Natural Disasters and Hazards; and Goal 15- Willamette River Greenway. The proposal is consistent with these Goals.